

# Sussex Research Online

## Doctrine and decision: navigating Labour's new constitutional position in the Lords

Article (Accepted Version)

Robinson, Emily and Watts, Jake (2019) Doctrine and decision: navigating Labour's new constitutional position in the Lords. *The Political Quarterly*. ISSN 0032-3179

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/82530/>

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

### **Copyright and reuse:**

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

## **‘Doctrine and Decision’**

### **Navigating Labour’s new constitutional position in the Lords<sup>i</sup>**

In memory of Baroness Patricia Hollis of Heigham, 1941-2018

The obituaries to Lady Hollis, from the broadsheets to local press in Norwich, the city she led through the 1980s, tell the story of a life lived in pursuit of social justice: from her involvement in campaigns for agricultural workers’ rights in Devon as a child, and black civil rights in Mississippi as a student, to her decades of political and legislative work on housing, child poverty and social security, as City Council Leader, government minister and opposition peer.

As well as a tale of commitment, passion and courage, this is also the story of a woman navigating and deploying different types of power, both inside and outside the state. Hollis’ path from taking the minutes at trade union meetings on behalf of her radical but under-educated father, through to winning awards for her legislative achievements,<sup>ii</sup> is not straightforwardly one of ever-greater access to the levers of power, but it is one of growing familiarity with the workings of the state.

Hollis’ own political trajectory was mirrored in her historical work, where she moved from studying those outside the formal political system, in *Pressure From Without in Early Victorian England* (1974), to those who managed to access and use it, whether at local level, as in her *Ladies Elect: Women in English Local Government* (1987), or in Westminster, as with *Jennie Lee: A Life* (1997). All of the subjects of her work

remained, to some extent, outsiders -- she was not drawn to the study of great men! – yet, they also knew how to navigate and to operate the levers of power.

Throughout her life, Hollis was interested in power: as something to be challenged, something to be exercised, and, above all, as something to be understood. She knew that political power was messy, diffuse and layered, that it was always constrained and compromised, and that this presented opportunities. It could be navigated and deployed in innovative ways, and it could be turned to serve the interests of those furthest from its levers. These are, of course, the concerns that have animated the Labour Party itself, through its journey from extra-parliamentary movement to party of government. And it is significant that Hollis should come to be such a powerful figure within the House of Lords, during the period in which it was irrevocably changed from a fortress of entrenched conservatism, to an effective (if still patronage-bound) tool in Labour's political armoury.

Hollis entered the House of Lords in 1990, when it was still dominated by hereditary peers. She was under no illusions about the position of Labour's peers at this time, and understood that she had been appointed as 'a sort of unpaid chocolate soldier', there more for show than utility. Yet, she also made it her purpose to squeeze as much out of the role as she could, serving as Opposition Whip and then Opposition Spokesperson for Environment and Social Security. She enjoyed 'planning ambushes', plying members with gin and hiding them in cupboards, in order, for instance, to defeat Michael Heseltine's 1991 plans to extend competitive tendering in local government.

The Labour Lords at that time were something of an insurgent force within the heart of the establishment. As Hollis put it, ‘we just did what we could’, ‘we used to win things just to sort of raise morale’.<sup>iii</sup> Yet, this was far from flippant. She was always concerned with outcomes, with using the powers of the House to change political reality. Neil Kinnock described the work of the Labour Lords in those years:

...they were serious people, seeking to uphold a virile democracy, and to get benevolent change whenever they could get it. And they used to succeed because they used to pull out tricks that we don't resort to now - of hiding away and then springing votes quite late and then sometimes scoring remarkable victories, which were always celebrated in the Shadow Cabinet and more widely.<sup>iv</sup>

Last autumn, we had the privilege of interviewing Lady Hollis about her work in the Lords. She clearly took immense pleasure in having secured significant victories from a position of such entrenched institutional weakness in the 1990s, and even more in the opportunities that its changed fate now offers.

The 2015-17 Parliament was the first time in history that the Conservatives were in government with no easily assembled majority in the House of Lords. This was the final playing-out of the removal of most of the hereditary peers in 1999, and it fundamentally altered the role that Labour was able to play in the Lords and – conversely – that peers were able to play in the Labour Party.

In November 2017, we interviewed key figures of the Labour Peers Group, including Hollis, about their experiences in the 2015-17 Parliament. In this paper we reflect on the implications of the changed arithmetic of the Lords. This is important for Labour's parliamentary politics, in ways that have not yet been fully appreciated. It also highlights the extent to which British parliamentary governance is built on historical assumptions about the alignment between ideological and constitutional positions, which no longer hold true.

### **Power and Restraint in the Lords**

Hollis knew that true power was often necessarily unseen. She was central to highly consequential legislative amendments on issues such as pension reform whilst in opposition. For example, in 1995 she was successful – with the support of others – in her quest to see pensions considered as divisible financial assets by courts during divorce proceedings, making way for divorced women to have more equitable access to what were often the largest financial assets held within a marriage. The slow and invisible work of building alliances and securing concessions, while letting the Conservative government save face, 'was more important than our wish to have a sort of nominal victory', with no legislative outcome.

While this kind of slow, performatively non-tribal, work goes on in both Houses, it is far more marked in the Lords. This is partly a feature of its legislative function, as a revising and scrutinising chamber. But it is also connected to its composition. Peers

not only come from a range of non-political backgrounds, but also tend to be older than their counterparts in the lower house. Even those peers who have previously served as elected politicians – whether in the Commons, local government, or the European Parliament -- view their role in the Lords differently. They are no longer directly accountable to electors and many feel that at the end of their political careers they can afford to be less tribal. Indeed, this is a requirement of success; as Hollis put it, ‘Crossbenchers aren't very keen on having politics in politics, so if you do sharpen up the tribalism, you lose your swing vote.’

Working within these constraints puts Labour Lords in an unusual position within the parliamentary party. While the party may have been happy with the limited victories they were able to achieve against the might of the hereditaries, under New Labour the situation changed both numerically and symbolically. Yet, even after the 1999 reforms, Lords ministers, including Hollis,<sup>9</sup> found themselves struggling to explain that while Labour’s 179-seat majority excused it from the niceties of parliamentary bargaining in the Commons, they couldn’t get legislation through the Lords without offering substantial concessions, and that – even then – this was not guaranteed. This remained the case, even after 2005 when the government appointed a number of Life Peers, making Labour the largest party in the Lords. Although the Lords was no longer an intrinsically anti-Labour House, the clashes over New Labour’s civil liberties agenda, followed by the Conservative-Liberal Democrat coalition, disguised the extent to which the legislative arithmetic had changed.

It is only since 2015 that the true impact of the 1999 reforms on the Lords as a legislative arena has been apparent. And while Hollis and the rest of the Labour Peers Group immediately understood the political potential of this new situation, they were also aware that this had not filtered through the rest of the parliamentary party. Moreover, many Labour peers are deeply conflicted about the position of the Lords and share their party's wider concerns about its place within the constitution.

### **Illegitimacy and Opportunity**

As a social democratic party, Labour has historically sought to gain access to the powers of the state, through forming a majority government. It has, rightly, imagined itself as the party of the Commons, in opposition to the Lords. While this relationship has often been more congenial in practice than we might expect, the very idea of Commons primacy, and the conventions that were built to protect it in 1911 and 1949, were rooted in the struggles of the two great reforming governments of the early twentieth-century, and based on the historical assumption that a popularly elected government might want to spend money against the wishes of a c/Conservative upper chamber.

This is, as the constitutional analysts Meg Russell and Daniel Glover have pointed out, what makes the current political situation in the Lords particularly novel.

Because Labour's challenge to the Conservatives tends to be over questions of public spending, the convention that the Commons has primacy on 'money bills' matters in a way in which it did not before.<sup>vi</sup> Moreover, the respective roles of the Houses have effectively been reversed, with the Lords defending public spending from a

Commons set on retrenchment. It is a truism that Labour has had to become conservative to preserve the welfare state but here we can see it playing out in a heightened constitutional arena.

Yet, constitutional politics are lagging behind this changing reality. Labour remains cautious about any measures (such as the introduction of elections) that might increase the legitimacy of the Lords, for fear that it would threaten the freedom of action of a future Labour government. As Labour Lords leader, Angela Smith, posed the question, ‘how does a Labour Government get its business through if you've got a second elected House?’<sup>vii</sup> This concern is rooted in the historical view that the role of the Commons is to be radical, and that of the Lords is to be conservative. In the words of another Labour Peer, Ann Taylor, ‘if you have two elected chambers, it's an absolute godsend for those who don't want any change; if you're a radical, you need some mechanisms for change, but you also need safety valves, which is what I think we provide up here.’<sup>viii</sup> What this argument doesn't allow for is a situation where a Labour-dominated Lords might want to limit the actions of a Conservative government.

Labour's peers are thus grappling with two interrelated questions: how can they use the limited powers of the revising chamber in order to effectively challenge the government on questions of public spending, and how can they do so without calling into question either their own legitimacy or the doctrine of Commons primacy? Hollis' answer to this question was simply ‘work the system that we've got’.



## **Pragmatism and Ideology**

This attitude was characteristic of a number of our interviewees, including the few committed to achieving a fully elected House of Lords. It is worth thinking about the politics of such pragmatism, in terms of both its motivation and its effects. Most obviously, it could be seen as a New Labour attitude; as the 1997 manifesto put it, ‘what counts is what works’. It is certainly true that Labour peers (who are largely associated with the New Labour era), focus on their ability to ‘make a difference’<sup>ix</sup> as a way to reconcile themselves to what one called ‘the bollocks of lordy-ism’, which is at odds with both their class backgrounds and political identities.<sup>x</sup>

This focus on ‘getting things done’ has, at times, also served as a distraction from the internal fractures within the Parliamentary Labour Party. During the 2015-17 parliament, for instance, the Labour Peers became tighter as a group, developing a distinct identity and political strategy. Again, this was explained in pragmatic terms as the ‘day-to-day work’ of parliamentary business: ‘we were putting issues down [...] we were writing our own amendments [...] And actually we made a lot of progress doing that.’ Relations between Labour parliamentarians across the two houses have now improved, but this concentration on the practicalities of *what could be done* was invaluable during a tricky period.<sup>xi</sup>

The balance between ideology and pragmatism (and, perhaps, pragmatism *as* ideology) was something that occupied Hollis all her political life. In 1978 she co-authored a dialogue on ‘Doctrine and Decision’, with her then husband, the philosopher Martin Hollis. While his ‘philosopher’s thoughts’ expounded upon the

impossibility of truly reconciling the compromises required of a local councillor with the commitments of a socialist – whatever the political integrity of the individual, her riposte (‘A councillor’s comments’) rejected the binary he set up between the ‘ideology’ of the Labour Party and the ‘realism’ of the council. She outlined the ways in which philosophical positions pulled in several different ways when applied to the diverse interests impacted by a single real-life problem, such as the pedestrianisation of a shopping street. This was not a matter of ideological purity versus compromise, but the need to recognise that the former simply couldn’t exist within the messiness of real life. As she put it, ‘the best is destructive of other and valid goods. Councillors have to go for solutions in the round, the “optimum” solution as they can devise it.’<sup>xii</sup>

Hollis’ focus on a practical politics that achieved real change is symptomatic of a wider concern within the Labour peers’ group for making a meaningful impact on the lives of citizens. Yet, this pragmatic and practical orientation is split between a recognition of the value of an active politics of *doing* (securing amendments, probing and making life difficult for a Conservative government) and an acknowledgment of the necessity of acting with care and restraint, within the bounds of constitutionality, in order to maintain their legitimacy. While Martin Hollis characterised such negotiations as the ‘diplomatic’ use of different languages for different audiences, in Patricia Hollis’ terms, the search for an ‘optimum’ solution must necessarily weigh the effects of any decisions in the round. The constitutional implications are not simply an inconvenience to be overcome, they are a central part of any political act.

## **Working Tax Credits**

This balancing act has been at the core of the politics of the Labour group in the Lords as they have come to terms with their capacity to wield greater power and influence over recent Conservative governments, through working in concert with other opposition parties and crossbenchers. In interviews, Labour peers repeatedly emphasised the importance of restraint, of not ‘taking the nuclear option’ of defeating the government, so as to maintain the legitimacy of parliament. Yet, even so, since 2016 there have been a number of high profile clashes with the government, several of which have ended with Conservative threats to abolish the House of Lords altogether. The Labour Lords leadership present this as a reflection of the Conservatives’ failure to adapt to the new political situation, emphasising that, in Angela Smith’s words, ‘there is absolutely nothing we have done as a party in the House of Lords which is against the conventions of the House. We have behaved absolutely properly’, but that the Conservatives are ‘not used to having a House of Lords that doesn’t just fall into line and they can march the hereditaries through the lobbies [...] so we bring criticism upon ourselves, not from acting outside the rules, but from acting within them.’<sup>xiii</sup> Indeed, Smith explained that it was the Government who were failing to honour the constitutional convention of Commons primacy: ‘I think what this government has done is confuse the role of the executive with the role of the House of Commons. So if we challenge the Government they’re saying that we’re trying to thwart the will of the elected House, which isn’t correct.’

The most high profile challenge that the Labour Lords have so far mounted to the Conservative government was on its proposed reforms to working tax credits. These changes were pursued under the aim of reducing public expenditure and aimed

directly at a New Labour measure. They would have seen a substantial decrease in the amount people could earn before their tax credits would be reduced, the rate of reduction increased and a cut in the amount that those claiming only child tax credits could receive.

Significantly, the government was perceived by members of the Lords to have misused the parliamentary process by seeking to put its reforms through as a Statutory Instrument, rather than as a part of the Welfare Reform Bill or as a money bill. It was, therefore, possible for Labour to claim that they were acting in *defence* of the constitutional conventions. Moreover, in contrast to the Liberal Democrats who employed what Smith described as the ‘nuclear option’ of rejecting the Government’s bill, Labour peers took a more nuanced approach, balancing their ideological opposition to the proposal and their political ability to combine with the Liberal Democrats to vote it down, with the realities of their constitutional position and their desire to secure meaningful change, rather than a symbolic victory.

Instead of rejecting the legislation, then, the Labour Lords, led by Patricia Hollis, took the constitutionally innovative but politically cautious step of securing a delay in the implementation of cuts to working tax credits for three years for existing claimants. This intervention was framed as a way of giving the Commons another chance to do its job, because the government could not rely upon a strong majority in the Commons, and was also becoming increasingly susceptible to public pressure. Hollis described how bringing about a further delay in the Lords would maximise the potential for opposition to develop in the Commons and beyond:

I knew that the Commons had twice if not three times debated this issue and accepted the government's position. And I knew that people like Heidi Allen and Frank Field and others were beginning to get some criticism into the public arena...and if we hadn't intervened it would have become law effectively that night. So I thought what we have to do is to try to get a pause to see whether the Commons would defy the Executive. So we then had this debate on the two issues: whether it was constitutional...and whether in terms of social policy it was essential that we do it...Because we knew that revolt was likely at the other end, it was giving it enough time for it to surface.<sup>xiv</sup>

It is striking that the Lords were seeking to mobilise public pressure, in order effectively to shame MPs into representing their own constituents. This is an odd inversion of the roles of the two Houses in historical terms, but one that is curiously respectful of their respective constitutional roles. The power to delay is one of the few real powers at the House of Lords' disposal. Since 2015, Labour Lords have made full use of this power in response to government legislation on working tax credits, child refugees and the EU Withdrawal Bill. They are keenly aware of the political potential of delay and the way in which it can, paradoxically, be used in the service of 'radical' or 'progressive' preferences.

The success of the Labour Peers Group in securing substantial changes to Conservative policy on working tax credits was consistently held up by our interviewees as an example of the fruits of delay. The three-year delay which the Hollis amendment imposed on the implementation of the policy, was specifically crafted to avoid any potential claims of financial privilege. It not only delayed the passage of the legislation through parliament, but also wrote a further substantive delay into the very fabric of the law. This careful legislative work resulted in the government revising and tempering its own proposals: a far greater victory than would have been achieved by defeating the legislation outright in the Lords, only for it to be later passed into law intact when it returned to the Commons.

Hollis' work on this Act has been, rightly, celebrated. What has been less commented upon is its constitutional significance. It is true that the innovation she proposed was undertaken in the name of maintaining broader constitutional legitimacy. It is also true that similar schemes have been developed in the past. We might think of the implementation delay written into the 1949 Iron and Steel Act, so as to maintain the convention that the Lords would not reject a manifesto commitment, while also 'enabling the electorate to have "another look" at the Bill' at the 1950 General Election.<sup>xv</sup> Yet, setting it against this latter example underlines the extent to which one of the basic assumptions of our constitutional system (of a radical Commons and conservative Lords) has been upended, opening up a very different set of political problems and possibilities.

It is, however, notable that the Parliamentary Labour Party as a whole has been slow to grasp the new power of the Lords to hold the government to account. Peers feel aggrieved that while (as Hollis put it to us) the leadership is ‘very graceful when we win things’ they have not been very helpful in ‘help[ing] us get there’. While the work of appointed peers revising the proposals of an aggressively austere Conservative government may be far from the party’s legislative ideal, it should not be dismissed. The ‘good’ here may be a deeply relative term, but unless and until the ‘best’ can be attained, it is all we have.

## **Conclusion**

Patricia Hollis’s own transition in the Lords from anti-establishment insurgent, to Labour minister and then to newly empowered opponent of a Conservative government is reflective of a broader story for the party in the Second Chamber. As Hollis navigated this transition, and applied her own particular philosophy of power, the wider Labour group in the Lords went through successive phases of adjustment. Most recently, the party has arrived at a new opposition scenario with an arithmetic that offers the potential for working with others on the crossbenches and in other parties to exert greater influence over legislation. But this must be balanced with both the limited legitimacy of an appointed House of Lords and Labour’s desire not to disrupt the primacy of the Commons.

Throughout the course of this evolution, Hollis’ commitment to a practical and pragmatic engagement with the House of Lords serves as an important lesson for a party that is otherwise presently restricted in its capacity to achieve real political

change in parliament. Labour's ambivalence to the House of Lords has been a consistent feature of its constitutional politics and has long prevented it uniting over a second phase of reform to the predominantly appointed chamber. But this alone does not preclude the value of the House of Lords to a party which must, at the very least, seek to protect its past achievements. The defence of Working Tax Credits is a clear example of the fruits that such an approach to the Lords can produce. It may be ameliorative rather than transformative, but in the absence of more radical measures, it is a policy worth defending by whatever means possible.

More widely, Labour's growing embeddedness in the House of Lords – a somewhat unanticipated consequence of its constitutional reforms in the late 1990s -- shows the distance the party has travelled in its long history. From its roots as an outsider party, Labour is now a key political force even in the most conservative arena of the parliamentary system. Hollis' own journey from the agricultural politics of rural Devon, to her legislative achievements as Baroness Hollis of Heigham may perhaps offer too neat an analogy with that travelled by the labour movement and Labour Party. Yet, her willingness to engage with power in all its forms offers an instructive example. It is worth reflecting on how the party as a whole might incorporate the second chamber into both its practical and symbolic politics, and how it might utilise this new source of constitutional power without accommodating to it.



---

<sup>i</sup> We would like to thank all the Labour peers we interviewed for this project, especially Lady Hollis, who was exceptionally generous with her time and insights. Thank you also to Ian Parker, for all his help with arranging the interviews, and to Lord Howarth, for sharing his thoughts on a draft.

<sup>iiii</sup> Peer of the Year (2016, Spectator), Campaigning Politician of the Year (2009, Channel 4) and Female Peer of the Year (2009, Scottish Widows/Dods)

<sup>iii</sup> Interview with Lady Patricia Hollis, November 2017

<sup>iv</sup> Interview with Lord Neil Kinnock, November 2017

<sup>v</sup> Hollis served as Parliamentary Under-Secretary of State and Government Spokesperson for the Department of Social Security and then the Department for Work and Pensions

<sup>vi</sup> Meg Russell and Daniel Glover, *Demystifying Financial Privilege: Does the Commons' claim of financial primacy on Lords amendments need reform?* (London: Constitution Unit, 2014). pp. 40-41

<sup>vii</sup> Interview with Lady Angela Smith, November 2017

<sup>viii</sup> Interview with Lady Ann Taylor, November 2017

<sup>ix</sup> Interviews with Lady Janet Royall and Lord David Blunkett, November 2017

<sup>x</sup> Interview with Lord Steve Bassam, November 2017

<sup>xi</sup> Interview with Lady Maggie Jones, November 2017

<sup>xii</sup> Martin Hollis and Patricia Hollis, 'Doctrine and Decision', in *Higher Education Quarterly* 32:2 (1978), pp. 213-222

<sup>xiii</sup> Interview with Lady Angela Smith, November 2017

<sup>xiv</sup> Interview with Lady Patricia Hollis, November 2017

<sup>xv</sup> See Herbert Morrison, *Government and Parliament: A Survey from the Inside* (London: Oxford University Press, 1959), pp. 180-184